IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5889 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TARUN ENGINEERING WORKS

Versus

UD RATHOD

Appearance:

MR DIPAK R DAVE for Petitioner No. 1-2

MR PRABHAKAR UPADYAY for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/07/2001

ORAL JUDGEMENT

The present Special Civil Application is filed by the petitioners, Messrs Tarun Engineering Works and Gujarat Stamping & Pressing Pvt. Ltd., challenging the award dated 6.10.1999, passed by the Labour Court, Nadiad in Reference (LCN) No.41 of 1994. The learned Judge by the impugned award ordered reinstatement of the respondent workman from the date he was relieved from the service with full back wages and cost of Rs.1000/-. The case of the petitioner is that the respondent workman was working with petitioner no.1, Tarun Engineering Works at the relevant time. He submitted his resignation on 25.10.1993. A copy of letter of resignation is produced at Annexure 'A', page 18, which is exhibit no.10/1, on which there is an endorsement reading,

"Accepted. To be relieved from 31.10.93."

It is the case of petitioner no.1 that on 31.10.1993 the respondent workman asked for a certificate which was issued in his favour, a copy of which is produced at Annexure 'B', page 19, wherein it is stated that,

"This is to certify that Shri Udaysing D. Rathod was serving in our organisation as Tool room Supervisor for the last 4 years. (emphasis supplied)

During the tenure of his service period, we found him hard working, sincere and honest and so also regular in discharging his duties.

His character and conduct also have been found excellently good."

It is further the case of petitioner no.1 that on 4.11.1993, respondent no.1 was paid the dues payable to him amounting to Rs.3040/-, the details of which are set out in Cash Voucher, which is produced at Annexure 'C', page 20 of this petition.

2. Thereafter petitioner no.1 received a letter, as it happens in several cases, dated 18.11.1993, by Registered Post A.D., a copy of which is produced at Annexure 'D', page 21, wherein it is stated in the subject:

"To withdraw resignation dated 10.11.1993". (emphasis supplied)

The contents of the letter reveal that the case of the respondent workman is that on 10.11.1993 one Shri J.P.

Dave has forcibly got his resignation written. The respondent workman withdraws the same and prays for allowing him to resume work with immediate effect.

3. It is also required to be noted that thereafter a copy of the notice given by the Union is produced at Annexure 'E', page 22, which is dated 2.12.1993. It is given by Gujarat Audyogik Kamdar Maha Mandal. Para 4 of said notice states that the resignation was obtained from the respondent workman on 9.11.1993, under coercion and threats and the same is withdrawn by Registered Post A.D. letter dated 18.11.1993. Interestingly, the next para says that "the services of the respondent workman were terminated by an oral order on 18.11.1993 without giving any notice or wages in lieu thereof and without following any legal procedure." Thereafter, as usual the matter was taken up for adjudication in labour forum and a statement of claim came to be filed, a copy of which is produced at Annexure 'I', page 30, wherein the respondent workman comes out with an altogether a new story than the earlier one, by stating in para 5 that on 20.11.1993 the management got his resignation under coercion and threats and that he withdrew the said resignation by writing a letter dated 18.11.1993. Even after giving the benefit for an inadvertent error it is not possible to reconcile the totally inconsistent story put forward by the workman. Surprisingly when the respondent workman stepped in for deposition before the Labour Court, he deposed that his resignation was obtained under threats on 10.11.1993 and that he had withdrawn the same on 18.11.1993 and that he is not paid any amount towards his rights. In cross examination he was confronted with exh.10/1, i.e. resignation letter dated 25.10.1993, for which he deposed that exh.10/1, is shown to me; in that signatures are mine and the signatures are in English. He further deposed that exh.10/2 is shown to me and it bears my short signature as an acknowledgment of having received the letter. He further deposed that, "it is true that on 4.11.1993 I was on job" (4.11.1993 is the date on which it is the case of the petitioner management that dues were paid to the respondent management). He has further deposed that, "I am shown exh.10/3 which bears my signature, but then my signature was obtained on a blank voucher." It is also deposed that, "on 1.11.1993 I was relieved and I was denied the work by an oral order"; that, "I was on duty on 21.10.1993"; about exh.10/3, blank voucher, "I have not filed any Police complaint or any other complaint." He deposed that, "exh.10/4 is shown to me and that bears my signature, but the contents are not written by me." He thereafter deposed that, "the contents are in my own hand writing."

(emphasis supplied)

4. The learned Judge has appreciated the case of both the sides and has recorded in para 6 that, "taking into consideration the arguments of both the sides it is to be decided as to whether the workman had given his resignation on 25.10.1993 though there is clear endorsement on the resignation letter that it is 'accepted' then below that it is written, "To be relieved from 31.10.93". The learned Judge says that said resignation was accepted on 31.10.1993. Without there being material the learned Judge has said that the resignation dated 25.10.1993 was not accepted on that day and that the respondent workman was not paid any dues on that day and that the respondent workman had withdrawn resignation on 18.11.1993. For the reasons best known to the learned Judge, the learned Judge has not taken care to take note of the fact that on 4.11.1993 dues were paid and the so called withdrawal of resignation is on 18.11.1993 which is certainly after 31.10.1993. Without discussing anything further the learned Judge has observed that in the cross examination of Mr.J.P. Dave, Director of petitioner no.1, it is stated that, "I have not written any letter to the respondent workman accepting resignation letter." The learned Judge ought to have appreciated that it was never the case of the petitioner management that the resignation was accepted by writing a letter to the respondent workman. The case was clear and to the effect that the resignation was tendered on 25.10.1993. The same was accepted in presence of the workman on the same day by making an endorsement,

"Accepted. To be relieved from 31.10.93".

The learned Judge gave an undue weightage and uncalled for interpretation to the statement which was narration of fact that the the petitioner management did not write any letter accepting resignation is uncalled for. The learned Judge has also made observations without giving any details of it that, "the documentary evidence of the company is contradictory to the oral evidence of the company." The learned Judge ought to have given details of it. In absence of any such details the same are of no consequence.

5. Mr.Prabhakar Upadhyay, learned advocate for the respondent workman vehemently contended that from the deposition of the Director of the petitioner management wherein he deposed that no letter accepting resignation of the petitioner was written, it is clear that the

resignation was never accepted and therefore, the learned Judge has rightly passed the award. Mr.Upadhyay also submitted that the respondent workman continued to work after 31.10.1993. But he is not able to substantiate his submissions. Therefore, the same cannot be accepted.

6. In view of the aforesaid discussion, the present petition is allowed. The judgement and award of the learned Labour Judge is hereby quashed and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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